

April 30, 1993

DOGM  
MINERALS PROGRAM  
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MAY 06 1993

DIVISION OF  
OIL GAS & MINING

5/003/020

Tony Gallegos, Reclamation Engineer  
State of Utah  
Dept. of Natural Resources  
355 W. North Temple  
Salt Lake City, UT 84180-1203

Dear Tony,

Thanks for your letter of April 20th relative to our Turquoise Stone Quarry tour. As you can see we are trying very hard to be model operators and build a business that also makes some economic sense. I appreciate your objectivity and feel that you take a balanced position in your area of responsibility.

As I have expressed many times we want to see the bad operations taken to task and I appreciate the opportunity to work with you so that the mining business can develop a better image.

Relative to your comments on cattle ranchers historically crossing the mine site where our fences are, they have used the dugway road constructed by Glen Fuller on a limited basis with permission from Glen Fuller when he would unlock the gate for them during cattle drives. Our fences have not changed that access at all. Historically the cattle people drove their animals over an old trail to the east of Rock Canyon and then down into the canyon through a narrow pass on the east side.

I have enclosed a couple of pieces of correspondence from dozens that Glen and I have written on that issue. It is extremely unfortunate that people simply can not get along, respect someone's property and have fair give and take deals.

We are getting started at the Rose Bud quarry and next time you visit I believe you will be pleased with the way we are doing things.

Sincerely,

Gary Mullard  
President

da  
enclosures



**NORTHERN STONE SUPPLY, INC.**

*Producing Quality Building Stone Products for Worldwide Distribution*

P.O. BOX 249 / OAKLEY, IDAHO 83346 / (208) 862-3353 / FAX (208) 862-3846



September 14, 1991

Royce Larson and Gary Rose  
Park Valley Hereford Association  
Park Valley, Utah 84329

Dear Hereford Association Members,

I wish to announce that effective September 14, 1991 Northern Stone Supply, Inc. will be taking over the operation of the Turquoise Stone Quarry from Glen Fuller of Fuller Quarries.

Glen has been a good friend and associate for many years and I have always admired the way he has run his business and the quarry. We plan no major changes in the way things have been done except to increase production to a modest level. For the past 40 years I have been involved in the quarrying and distribution of various types of building stone beginning in the Los Angeles, California, Lake Tahoe and Reno, Nevada areas during 1960 and 1970, and for the past 20 years in Oakley, Idaho where my company operates our Rocky Mountain Quartzite Quarry.

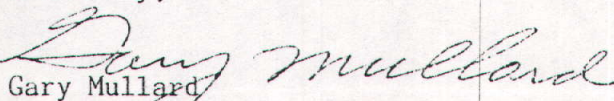
We look forward to working with the people in Park Valley and maintaining the same policies and cooperation that Glen Fuller has established.

We wish to maintain the long standing policy of no motor vehicle access to Rock Canyon via the dugway road established by Glen. All of our employees and friends will abide by this rule.

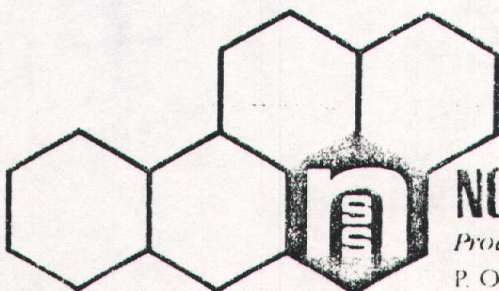
Rock Canyon and the Park Valley area are places of special natural beauty and we intend to do our part to help preserve the area for the enjoyment and benefit of present and future generations. If at any time you need to contact me I can be best reached through my office in Oakley.

I look forward to meeting everyone and establishing a friendship.

Sincerely,

  
Gary Mullard  
President

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HISTORY OF THE DUGWAY ROAD  
(Fuller Quarries)

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Nov. 20, 1992

The so-called Dugway Road was first completed in the late summer and fall of 1969. Since a substantial portion of the Turquoise Stone Placer Claim included the bottom and steep slopes of Rock Canyon, it made good sense to provide access to that area so that float stone (both turquoise and off-white), landscape boulders, and crushing-grade stone secured by working stone pushed over the higher cliffs could be secured.

Except for some help from hired labor and my family, all of the work on that road was, and has been, done by me with an International 175 crawler loader. The road was blasted out of a sheer cliff--all done by hand drilling--and exploded with a mixture of ammonium nitrate, triggered with 70% gelamite primer. The road is short (about 250 feet) it is very steep (about 30° grade), and very narrow (about 8 feet)--in fact, a large pickup truck has difficulty traveling up and down because its side mirrors practically rub against the cliffside.

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The steepness and narrow nature of the road obviously did not lend itself to being used by larger trucks, but it was adequate for use by crawler- and wheel-type loaders. As such, it was contemplated to be limited in usage when first constructed. However, at that time I entered into an arrangement, in writing, with the Park Valley Hereford Corporation (PVHC), who was then represented by L. G. Carter, operator of the local general store, whereby I leased a stone deposit high on the hillside and immediately east of our Claim. I paid a guaranteed minimum amount, whether any stone was removed or not, plus a royalty for stone actually removed.

It was contemplated at the time that the PVHC stone deposit would be worked by traveling up Rock Canyon and then doubling back up a side canyon so as to get on top of the ridge where the leased deposit was located. Obviously, the temporary road (which still exists at the same width and grade) would of necessity have been widened and reduced in grade to accommodate larger equipment traveling the longer distance.

The PVHC lease arrangement didn't last very long. After a couple seasons, a meeting was called and I was informed that the PVHC wanted "out" of the arrangement with me so that they could make a deal with a Logan, Utah, organization. Being desirous of being a good neighbor, I consented and granted their request even though I had expended several thousand dollars (at then prices) in building the road, which, in substantial part, was with the expectation that the lease arrangement would proceed as planned. And, inasmuch as the expected plan and reason for enlarging the road did not materialize, nothing more was done on the road at that time. Incidentally, the PVHC's arrangement or "deal" with the Logan group never worked out.



.....

Sometime during the latter part of May in 1970, two or three members of the PVHC dropped by our cabin and asked me if I would permit them to drive their cattle into Rock Canyon and on to their summer range, and back again in the fall, via the Dugway Road. Again, trying to be neighborly, I consented--with certain conditions: The road could only be used by travel on horseback or on foot--no vehicles; a metal gate would be installed (by me) at the top of the Dugway Road, with a permanent chain and a padlock so that it could be locked and the road closed from just before deer season (approximately October 18 to 22 of most years) until we opened it the following spring in late May; and that their invitees (such as permit-paying deer hunters) and themselves should not use the road for any other use unrelated to cattle operations.

The arrangement worked satisfactorily until the fall of 1990 and the spring of 1991, without incident. The PVHC group never by any act or conduct got out-of-line, as it were, nor did they contribute or offer to contribute anything in the form of money or effort to maintain the road when the 1975 washout occurred (mentioned later). On a few occasions when they didn't round up all of their cattle by deer season, they drove them out over their old trail or, if I was at the cabin, they asked permission to have me open the gate and let them through. On another occasion, one of their members asked me if he could have a key to the gate (as well as to our yard gate, which was locked most of the time) so that he could "get a load of wood in his pickup truck." We denied that request, without further incident.

After the deer season during the fall of 1990, one of the PVHC members found one or more animals in Rock Canyon and, instead of using the old trail, he took it upon himself to break the metal gate so as to get the animal(s) through. The incident wasn't reported to me until the next spring when my son Kim found the damaged gate and proceeded to repair it. Subsequently, during the early summer of 1991, when the BLM-certified patent surveyor had his vehicle parked at the top of the Dugway Road, two Mexican employees of a PVHC cattleman, riding their horses, apparently felt a need to spur their horses in order to get around the vehicle. They registered a complaint with their employer, and the displeasure was ultimately passed on to me. Needless to say, had either event taken place while I was on the scene or had I been required to repair the gate, the Dugway Road would have been barricaded forthwith.

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When the Dugway Road was constructed, it was impossible to blast the cliff down to the level of the stream in the canyon without making the road too steep for any practical vehicular use. To handle the problem, I terminated the blasting at a place on the edge of the cliff that encountered a vertical drop from the cliff to the stream in the bottom of the canyon of between 8 to 10 feet. In



order to span the stream and reach the other side of the canyon, it was necessary to bridge the area with fill, much of which was smaller blasted material which was pushed into the void as downward blasting occurred. In the process, a small, deep pond of approximately 30 by 50 feet was created on the upper side of the crossing. The overflow from the stream passed over the top of the fill.

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As probably should have been anticipated, the fill across the stream bed was not adequate to withstand indefinitely the effect of the annual torrent of water that came down Rock Canyon during May of each year. The stream in Rock Canyon during May and June run-off when the warm sun melts the winter snow must produce a torrent of between 15 and 25 c.f.s.--and the spring of 1975, beginning in mid-May, was no exception. The entire fill across the bottom of the canyon road washed out, leaving the Dugway Road extended and terminated vertically far above the stream bed--8 to 10 feet of solid quartzite wall. No cattle or horses could possibly use the road in the condition then existing; in fact, a man on foot would have had an extremely difficult time, possibly needing ropes, in getting from the stream bed in the canyon up to the terminated end of the Dugway Road.

I didn't attempt to restore the Dugway Road crossing until late in 1975 and the early summer of 1976, partly because we had no compelling need to use it at the time and also because our work force required the use of the 175 loader for quarry operations. Consequently, I worked at the job sporadically--in the late fall after the deer season when our workers weren't on the job (1975) or on weekends during the summer of 1976 when the crew wasn't working. It required several trips to the area with the 175 loader--consuming in the aggregate about two days--to secure two- and three-ton boulders, which were carried down the Dugway Road and dropped into the chasm below, in order to "bridge" the stream bed once again. The new fill across the area consisted of larger boulders than were installed previously.

I am positive that not a single domestic animal, including any PVHC member on horseback or on foot, used the Dugway Road during any time in 1975 or during most of 1976 in going to or from Rock Canyon or for any other purpose whatsoever.

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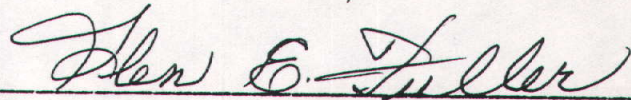
\* The Utah case of Zollinger v. Frank has set forth the standard for establishing an easement of travel, usually referred to as a "prescriptive" easement. If a roadway has been traveled for a continuous period, without interruption, for 20 years, the law creates a presumption that the usage has been adverse to the owner of the land beneath the easement. But the presumption can be readily rebutted by a showing that the use was permissive, that the users did nothing adverse to the owners (such as contributing labor, materials, control or supervision of the roadway), or that there wasn't an unbroken and



continuous use for a consecutive 20-year period of time. If adverse usage can be shown by the PVHC, it must be predicated on the two incidents in 1990-91--falling far short of the type of adverse conduct necessary to counter the facts involved in this situation.

The Dugway Road is and always has been a private road, controlled and regulated by Fuller Quarries; the limited use made of the road has been strictly permissive and in no way adverse. PVHC cannot even present facts which would raise a presumption in their favor, let alone any showing of adverse use.

Dated this 20th day of November, 1992.

A handwritten signature in cursive script, reading "Glen E. Fuller", is written over a horizontal line.

Glen E. Fuller



*Law and Business Offices of*

GLEN E. FULLER

245 N. VINE ST., #608  
SALT LAKE CITY, UTAH 84103

801-355-5696

June 27, 1992

Mr. Gary Mullard, Pres.  
Northern Stone Supply, Inc.  
P.O. Box 247  
Oakley, Idaho 83346

Dear Gary:

Since our meeting with members of the PVHA during their cattle drive on Wednesday, June 17, I have had occasion to assess the entire situation and the respective situation of your operations and that of the cattle association. After reviewing the history of our operations in Rock Canyon since the fall of 1954, I quite frankly am disturbed and disappointed by recent events.

To begin, the 75 acres in our placer and millsite claims contain some of the poorest grazing lands to be found anywhere. And as for driving cattle into the canyon from the lower lands, the whole hillside (including most of our 75 acres) from Fisher Canyon to Duncan Canyon is so open that there should be no problem of interference with the activities of both cattle and quarry operations. The problem, of course, is the Dugway Road, which I built.

Until the Dugway Road was blasted out of solid rock, the PVHA used the old logging trail on the east side of Rock Canyon, and later, after the drift fence was put above our present quarries, a gap was put in that fence to facilitate livestock movement. As for the Dugway Road, it cost several thousand dollars to construct at that time. So, when several members of the PVHA approached me after it was built and asked if I would permit them to drive their cattle over that road since it was much easier to travel that way, I told them that I would allow them to use the road for that limited use--and that is what has happened on a year-to-year basis since then (except for one year, which I shall tell you about later).

At no time has the PVHA paid me--or offered to pay--for any road improvements on any roads on our claims or for work on the road from the end of the County Road to our quarries, even though their



Mr. Gary Mullard, Pres.  
Northern Stone Supply, Inc.  
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use of the latter road (including their many hunters) would exceed our usage. But the real point of bringing forth this matter centers around the issue of how much they expect us to give versus how little they are willing to contribute or concede in order for everyone to get along.

This whole matter struck home real hard when, during the cattle drive, the statement was made that PVHA had acquired an easement or right of way by 21 years of use. What was meant by the statement at first appeared to be a general claim, but it only took a few minutes to figure out that the claim was being made as to the use of the Dugway Road--and there is no way that I will concede the point. In fact, I view the claim as an insult and a slap in the face as the culmination of what I always thought was a friendly relationship.

An easement (right-of-way) can be established in Utah by 20 years of continuous, adverse usage. Twenty years of continuous use can establish a prima facie showing, but permissive use destroys the necessary element of adversity. Although they (PVHA) can't show 20 years of continuous use, consider also these (among other) facts which don't support adverse use:

- Permission was initially granted to use the Dugway Road, and on several occasions PVHA riders have stopped by the cabin either before or at the time of the spring cattle drive and asked if we would open the Dugway gate;
- During at least two-thirds of all cattle drives, even when the Dugway gate had been opened for them, our yard gate was locked, thus making it necessary to drive cattle to the west and around our yard;
- Except for possibly a year or two, we have always locked the Dugway gate after we have let the fall cattle drive come through and before the deer season began;
- One PVHA member asked for a key to the Dugway gate several years ago, but the request was denied.
- Even when the Dugway gate wasn't locked, we always kept our chain and padlock hanging on the steel-rod post so that everyone would know that passage was restricted; incidentally, we also built the Dugway gate.



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•Except for two disturbing 1991 incidents which I will relate shortly, I defy the PVHA to show even the slightest action on their part, or any single incident, that would indicate any manner of adverse use of our Dugway Road by the PVHA.

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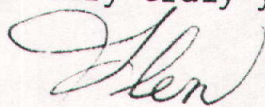
At about this time in 1991, our surveyor, with his vehicle, was setting up equipment about 50 feet south of the Dugway gate when two Mexican herders on horses came up the road from the south. The surveyor didn't understand Spanish; anyway, they spurred their horses and nearly knocked him down as they pushed by. No problem, except that the two riders complained to their boss (evidently a PVHA member), who in turn registered his displeasure--and it got back to me. Obviously, I resented the priority stance taken against our property.

The other incident occurred after deer season when someone's cow was up in Rock Canyon. Whoever moved the animal took it upon himself to break the hinges on the Dugway gate so that he could use the Dugway Road. Perhaps there may have been some justification for breaking the gate in his own mind, but he seemed to feel no responsibility to repair the damage, which required taking welding equipment to the site and paying welder's wages to repair the damage. Had the details of this last incident been fully known to me on June 17, the PVHA would have found the Dugway gate padlocked and the road barricaded.

I have the feeling that some of the recent trouble is due to a changing membership of the PVHA. For years, I knew almost everyone; now I know just a few. I sense that the cattle drives are a partial-day "whoop and holler" affair, with everyone taking off afterwards as soon as possible without picking up the pieces or doing any odd jobs that need attending. Maybe I am wrong.

At any rate, considering the entire situation, unless the PVHA wants to be more accommodating, less selfish, and more willing to consider factors other than the narrow convenience of its own members, it may well be necessary to bring the matter of the Dugway Road and gate to a showdown this year.

Very truly yours,



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Glen E. Fuller